

KANSAS

CORPORATION COMMISSION

RECEIVED & INSPECTED

JAN 4 - 2005

FCC - MAILROOM

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

DOCKET FILE COPY ORIGINAL

December 30, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 - 12th Street, SW, Room TW-A306
Washington, DC 20554

RE: Supplemental Section 254(e) certification for Nex-Tech, Inc.
In the Matter of the Federal-State Joint Board on Universal Service
CC Docket No. 96-45

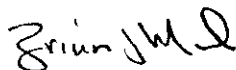
Dear Ms. Dortch:

This letter serves as the Kansas Corporation Commission's (KCC) certification to the Federal Communications Commission that on October 18, 2004, in KCC Docket No. 05-NTHT-140-ETC, the KCC designated Nex-Tech, Inc. as an eligible telecommunications carrier in the Norton, Kansas exchange. That order is enclosed with this letter. In addition, Nex-Tech, Inc. has certified to the KCC that it will use its universal service support consistent with Section 254(e) of the Telecommunications Act of 1996.

This letter serves as a supplement to the letter sent to you by the KCC on September 29, 2004.

If you have any questions, please don't hesitate to contact the KCC.

Yours truly,



Brian J. Moline, Chair
Kansas Corporation Commission

BJM: crh
Encl.

No. of Copies rec'd 0
List ABCDE

2004.10.19 08:52:26

Kansas Corporation Commission

Susan K. Duffy

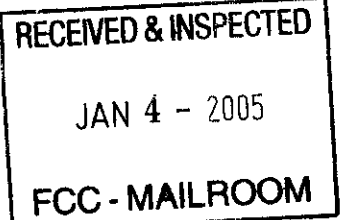
**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners:

Brian J. Moline, Chair

Robert E. Krehbiel

Michael C. Moffet



In the Matter of the Application of Nex-Tech, Inc.)
for Designation as an Eligible Telecommunications)
Carrier in the Norton, Kansas Exchange Area.)

Docket No. 05-NTHT-140-ETC

ORDER GRANTING APPLICATION

NOW, the above-captioned matter comes before The State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows.

1. On August 24, 2004, Nex-Tech, Inc. (Nex-Tech) filed its application seeking designation as an eligible telecommunications carrier (ETC) in the Norton, Kansas exchange area for the purpose of receiving both Federal and Kansas Universal Service support.

2. On October 6, 2004, Staff filed its Report and Recommendation in which it recommended the Commission grant Nex-Tech's application to be designated an ETC in the Norton, Kansas exchange area for the purpose of receiving both Federal and Kansas Universal Service support. The Norton exchange is located in the service territory of Southwestern Bell Telephone, L.P. (SWBT).

3. On September 9, 2004, SWBT filed a Petition to Intervene. On September 14, 2004, the Commission issued an order granting SWBT's Petition to Intervene.

4. Staff reported that Nex-Tech was certified by the Commission on January 14, 1999, in Docket No. 99-RTST-422-COC, to provide switched local exchange telecommunications services and exchange access services throughout the service areas of SWBT. Nex-Tech is a

wholly owned subsidiary of Rural Telephone Service Company, Inc. (Rural), a rural independent local exchange company. Staff notes that Nex-Tech is properly registered with the office of the Kansas Secretary of State with an “active and in good standing” status.

Federal ETC Requirements

5. Section 214 of the Federal Telecommunications Act of 1996 discusses the requirements that a company must meet in order to be designated an ETC and the role of this Commission in making the determination:

(e) Provision of Universal Service.-

(1) Eligible telecommunications. – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale or another carrier’s services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. 47 U.S.C § 214 (e)(1)-(2).

Therefore, before designating Nex-Tech an ETC in the Norton, Kansas exchange area for the purpose of receiving federal support, the Commission must determine whether Nex-Tech is offering services supported by federal universal service support and the types of facilities used to offer the supported services. The Commission must ensure that Nex-Tech is offering those

services throughout the Norton, Kansas exchange area and advertising the services through media of general distribution.

Services or Functionalities

6. 47 C.F.R. § 54.101(a) identifies the following services or functionalities that shall be supported by federal universal service support mechanisms: (1) voice-grade access to the public switched network; (2) local usage; (3) dual-tone multi-frequency (DTMF); (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. In its Report and Recommendation, Staff listed all nine services and functionalities and included the explanation provided by Nex-Tech on how the company is meeting their requirement to provide the supported services.

Types of Facilities Used to Provide Services

7. Staff stated that Nex-Tech constructed an overlay to SWBT's network using fiber-to-the-home (FTTH) network architecture to meet its ETC obligations. Nex-Tech will provide services to customers in the Norton exchange via its FTTH network, fiber/copper facilities, resale and/or UNEs to meet the requirements for service. Nex-Tech will be able to use the resale option available through an interconnection agreement between RTSC Communications, Inc. (RTSC) and SWBT that was approved in Docket No. 01-SWBT-860-IAT. RTSC subsequently changed its name to Nex-Tech, Inc. in Docket 02-NTH-424-CCN. Staff noted that resold lines are not eligible for support in accordance with 47 C.F.R. §54.201(i). Nex-Tech is also in the research and development process of using a fixed wireless technology that would replace a facilities-based local loop. The technology would use a licensed wireless spectrum. Nex-Tech has not demonstrated that the wireless technology will meet the criteria

established in 47 C.F.R. § 54.101(a). Staff noted that Nex-Tech would need to make such a showing before it can receive support for customers through the wireless offering.

Advertising

8. Nex-Tech stated that it does and would continue to advertise the availability of services supported by the federal universal service mechanisms throughout the Norton, Kansas exchange area. The methods of advertising utilized may include newspaper, direct mailings, bill inserts, telephone directory advertising and local sign-up events. In Docket No. 04-ALKT-283-ETC, the Commission required ALLTEL Kansas Limited Partnership to work with Staff in developing languages that includes, among other things, direction for customers to the Commission's Office of Public Affairs and Consumer Protection for complaints regarding any service issues. In Docket No. 04-RCCT-338-ETC, the Commission required RCC Minnesota, Inc. to also work with Staff in developing such language. Staff stated that if Nex-Tech is granted ETC status, Nex-Tech should be aware that the Commission may require Nex-Tech to work with staff in developing similar language or require Nex-Tech to use the Commission approved language from the previously discussed dockets. In the same orders, the Commission also stated that it would open a generic proceeding to discuss issues including the content, frequency and types of media for advertising. If Nex-Tech is granted ETC status, and the Commission conducts a generic investigation regarding advertising as well as other ETC issues, Nex-Tech should be aware that those obligations will be applied to all existing ETCs as well as companies who receive ETC designation in the future.

Kansas ETC Requirements

9. The Kansas Telecommunications Act addresses the standards the Commission should use when designating a provider as an ETC for purposes of receiving KUSF support.

K.S.A. 66-2008(c) states:

Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

As detailed above, Nex-Tech meets the criteria of Section 214(e)(1). The Commission has not established additional state-specific criteria that must be met in order to qualify as an ETC.

Portability of KUSF Support

10. To remain consistent with the Federal fund, the Commission follows the FCC's rules regarding portability of support in determining the amount of KUSF support for which a competitive ETC is eligible.¹ Pursuant to 47 C.F.R. § 54.307(a)(1), an ETC providing service in a non-rural service area shall receive support for each line in a particular wire center based on the incumbent's support for the line. Subparts 3 and 4 of 47 C.F.R. § 54.307(a) states that an ETC providing service using neither UNEs nor resold services will receive the full amount of support that the incumbent received. Therefore, when utilizing its own facilities, Nex-Tech will receive the full amount of support designated for SWBT in the Norton exchange.

11. The FCC's rules at 47 C.F.R. § 54.307(a)(2) address ETCs providing service through UNEs. This section outlines that a CLEC providing service via UNEs should receive the lesser of the UNE prices or the incumbent provider's per line payment from the USF. In Docket

¹ In case nos. 01-C-39, 03-C-20, and 2004-CV-19 the Nemaha County District Court invalidated the Commission's distribution of KUSF support. The Commission has filed a Notice of Appeal. If the decision is upheld, the distribution of support could change.

No. 03-SAGT-867-ETC, Sage Telecom, Inc. and SWBT stipulated that this portability mechanism would be acceptable, pending a general investigation by the Commission. If the Commission orders a different methodology for providing support to an ETC using UNEs other than those agreed to in the stipulation, implementation of the order would occur on a going forward basis, subject to the party's appellate rights.

Findings and Conclusions

12. The Commission finds that Staff's recommendation to approve Nex-Tech's application and to designate Nex-Tech as an ETC in the Norton, Kansas exchange area for the purpose of receiving both Federal and Kansas Universal Service support is reasonable and hereby adopts same.

13. Nex-Tech must use its support for the intended purpose and the company will be required to self-certify that it does use the support as intended each year. Additionally, any decisions made by the Commission in a generic docket regarding additional ETC requirements may impact Nex-Tech and the company may be required to follow any additional requirements in order to continue receiving support.

14. Nex-Tech will receive the full amount of per-line support designated for SWBT in the Norton exchange area when Nex-Tech utilizes its own facilities. Because SWBT currently receives no KUSF support in the Norton exchange, except Lifeline support, and only interstate access and Lifeline support from the FUSF, the support Nex-Tech will receive is limited to the same type and level support SWBT receives. Nex-Tech will receive no support for lines served through a resale arrangement. For those lines served through UNEs, Nex-Tech will receive the lesser of the UNE prices or SWBT's per-line support from the FUSF and KUSF. If Nex-Tech

wishes to serve customers through a wireless option or any other option not listed in its application, Nex-Tech will need to make a showing that the mode of service is consistent with the requirements of 47 C.F.R. § 54.101(a).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Nex-Tech Inc.'s August 24, 2004 application to be designated as an ETC in the Norton, Kansas exchange area for the purpose of receiving both Federal and Kansas Universal Service support is granted as set forth above.

B. The parties have fifteen days from the service of this Order in which to petition the Commission for reconsideration of any final issue or issues decided herein. If this Order is mailed, service is complete upon mailing and the parties may add three days to the fifteen-day time frame. All petitions for reconsideration must be filed with the Commission's Executive Director.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of issuing such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com

ORDER MAILED

Dated: OCT 18 2004

OCT 18 2004

 Executive
Director

Susan K. Duffy
Executive Director

rl